

April 15, 2020

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4
5 *In Re* FLINT WATER CASES Case No. 16-10444
6

7 _____/
8 STATUS CONFERENCE
9

10 BEFORE THE HONORABLE JUDITH E. LEVY
11 UNITED STATES DISTRICT JUDGE

12 APRIL 15, 2020
13

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I N D E X

MISCELLANY

Proceedings.....	5
Certificate.....	44

April 15, 2020

6

P R O C E E D I N G S

THE CLERK: Now calling case number 16-10444, the Flint Water cases.

THE COURT: Good. Thank you, Abigail. And in addition to 16-10444, we have essentially all of the pending Flint Water cases. In addition to that, we also have present with us today counsel from the Department of Justice on the Meeks federal tort claims case that they have not yet answered in but there is -- or filed a motion to dismiss. But there is a pending motion and an issue related to that case on the agenda today. So I appreciate their presence.

So first, I wanted to welcome Judge Farah and his staff and go through just a few sort of protocols for how we're going to try to conduct this meeting or this hearing.

But before I do that, I want to welcome everyone to the conference call, including anyone who's on by either video teleconference or telephone. And I sincerely hope that all of you are able to stay home and stay safe and that you and everyone you love is healthy and doing okay.

So I know many of us now know people who have been sickened by COVID-19. Some have died. And so it is an especially difficult time for all of us. And so I appreciate that on this case we're continuing to do everything we can to move the case forward -- cases forward and in light of all that's going on around us.

April 15, 2020

7

1 So we are a court of public record. And it's very
2 important to me, and it has been since the beginning of my
3 judgeship, to ensure that the courthouse doors are open to
4 anyone who has or believes they may have an interest in a
5 particular proceeding. And that certainly is at its height in
6 criminal matters about whether our constitutional rights at
7 issue when the door is closed.

8 But it's also an issue especially in a case like this
9 where there are a great many people who either are involved as
10 plaintiffs or defendants. But also there's some interest
11 beyond the jurisdiction of Flint in this case.

12 So to that end, that's why I set up the additional
13 conference call feature so that anyone who has an interest in
14 this litigation can be present. We won't know for sure if it
15 all works and until we conclude the hearing and receive all
16 the criticism about what worked or what didn't work. That's
17 usually what we hear about. We rarely hear when something
18 works out. That's okay. I don't need to hear that.

19 But from my perspective, if there's a possibility
20 that doing some of this remote work, which will certainly end
21 when we're able to end it, permits greater access to the
22 court, then I'm all for it. Because the drive from Flint to
23 Ann Arbor is a long one. I'm so thankful that Judge Farah and
24 his law clerk have made that drive. But it's not the easiest.

25 So if this permits people in Flint to be able to

April 15, 2020

8

1 listen in or participate in a more fulsome way, then I hope we
2 can take advantage of that.

3 Today's agenda -- and we'll get to appearances in
4 just a minute -- contains matters that are almost exclusively
5 related to case management. We don't have substantive motions
6 about the law that governs the underlying claims in this case
7 to be addressed today.

8 But in a case like this, case management can have a
9 significant impact on the equities in the case and on the
10 outcome of a case. So I appreciate your presence today on the
11 hearing and your patience as we try to make sure that the
12 technology works.

13 Before we have appearances, I want to remind
14 everybody to mute your phone. My court reporter Jeseca
15 Eddington is present. She's taking down the record. And we
16 ask that everyone who possibly can have their full name
17 identified on their device that they're connecting with.

18 And I see that that has generally worked. But not --
19 it's not 100 percent. And that's understandable. So please
20 identify yourself when you speak. I think many -- most of you
21 have your full name there. And when you speak, Jeseca will be
22 able to tell that it's you. So I just ask that you do your
23 best in that regard.

24 So why don't we start with appearances for the
25 record. And what I'll do is call out who I believe is here by

April 15, 2020

9

1 video Zoom link. And then I have a list of people who I
2 believe are on the telephone who wish to make appearances as
3 well. Those appearances have been made by e-mail and we'll
4 convey that to Jeseca so that the record reflects your
5 presence.

6 But I'll start with the LAN defendants. I believe
7 that by video -- and please just say yes if I've got this
8 right. We have Mr. Mason. And what you have to do is press
9 the space bar to unmute. It's not working. I'll unmute you.
10 Go ahead.

11 MR. MASON: Yes, Your Honor. This is Wayne. I got
12 kicked off. I'm sorry.

13 THE COURT: Oh, okay. Feel free -- if something like
14 that is happening, when you get back on, will you try to let
15 us know. You can send a message, a chat. But you could also
16 just -- you can also raise your hand by Zoom technology. In
17 some way, try to let me know that we're having a problem. But
18 thank you, Mr. Mason.

19 And Mr. Erickson. You're on? Pretty sure I've
20 already heard -- there's Mr. Erickson. Can't hear you, Mr.
21 Erickson. And you're not muted. Let's see. Oh, I see, Ms.
22 Smith, what you're talking about with the pin. Oh, well. Mr.
23 Erickson's on. We can see him. Mr. Campbell for VNA.

24 MR. CAMPBELL: Yes, Your Honor, I'm here.

25 THE COURT: Thank you. Mr. McDonald for McLaren?

April 15, 2020

10

1 MS. SMITH: Mr. McDonald is unable to attend the
2 status conference. I'm here on behalf of McLaren. This is
3 Susan Smith counsel for McLaren.

4 And while I have you, let me indicate that Mr.
5 Erickson is using the chat function to indicate that he's
6 present and not on mute. So the issue with being able to hear
7 his audio must be on the Court's end.

8 THE COURT: Okay. And I am -- yeah. I'm very
9 thankful that Josh Matta, the Court's IT director, is on this
10 with us. So I'm going to see whether he can help sort that
11 out.

12 So for the city defendants, Mr. Berg, are you on?

13 MR. BERG: Yes, Your Honor. Rick Berg here for the
14 city defendants.

15 THE COURT: Okay. And is Mr. Kim also on or he's on
16 by telephone? Okay. Is Alexander Rusek, are you on?

17 MR. RUSEK: Alexander Rusek. Good afternoon, Your
18 Honor. I'm appearing for Mr. Croft and then also for the
19 other individual city defendants today. And if you hear horns
20 in the background, I live in downtown Lansing and there's a
21 protest going on outside my front window right now. So I'll
22 be on mute as much as possible.

23 THE COURT: Okay. I read about that protest.

24 So for Hurley Hospital, is Mr. Jensen on?

25 MR. JENSEN: Yes, Your Honor. Larry Jensen on behalf

April 15, 2020

11

1 of Hurley defendants.

2 THE COURT: Thank you. For MDEQ defendants, Mr.
3 Barbieri.

4 MR. BARBIERI: Yes, Your Honor. Charles Barbieri for
5 MDEQ defendants Patrick Cook and Michael Prysby along with the
6 other MDEQ defendants.

7 THE COURT: Okay. And unless I get it wrong, feel
8 free to just say yes. So it's Mr. Thompson on for Rowe?

9 MR. THOMPSON: Yes.

10 THE COURT: Thank you. For the State of Michigan,
11 Ms. Bettenhausen?

12 MR. BETTENHAUSEN: Yes, Your Honor.

13 THE COURT: And Mr. Gambill?

14 MR. GAMBILL: Yes, I'm here, Your Honor.

15 THE COURT: Good. And co-liaison and individual
16 plaintiffs' counsel, Mr. Shkolnik.

17 MR. SHKOLNIK: Good afternoon, Your Honor.

18 THE COURT: Hi. Mr. Stern.

19 MR. STERN: Yes, Your Honor.

20 THE COURT: Good. And Mr. Dawson.

21 MR. DAWSON: Yes, Your Honor.

22 THE COURT: Great. And you're on for the Brown
23 cases?

24 MR. DAWSON: That is correct, Your Honor.

25 THE COURT: And Mr. Washington, are you with us?

April 15, 2020

12

1 MR. WASHINGTON: Yes, I am, Judge.

2 THE COURT: Great. Thank you. Welcome.

3 MR. WASHINGTON: Thank you.

4 THE COURT: Mr. Washington, could you name your
5 client, please?

6 MR. WASHINGTON: I have the Anderson plaintiffs and I
7 have the Joel Lee as my clients, Judge, in this litigation.

8 THE COURT: Good. And the interim class counsel, Mr.
9 Leopold.

10 MR. LEOPOLD: Mr. Leopold is here, Your Honor.

11 THE COURT: And Mr. Pitt.

12 MR. PITT: Present, Your Honor. Good afternoon.

13 THE COURT: Hi. And for the EPA, Mr. Williams.

14 MR. WILLIAMS: Yes, Your Honor.

15 THE COURT: And I'd like to note that you are the
16 second Mr. Michael Williams on this case. We have so many
17 lawyers --

18 MR. WILLIAMS: I was hoping that I chose DOJ Williams
19 to differentiate us, but it's a common name.

20 THE COURT: And then I think we're also joined by our
21 Special Master Deborah Greenspan.

22 SPECIAL MASTER GREENSPAN: Yes, Your Honor.

23 THE COURT: Thank you. And of course we have Judge
24 Farah and his law clerk Samantha Weinstein. And my law clerk
25 Abigail. Another law clerk has assisted in having the folks

April 15, 2020

13

1 on the telephone join us.

2 On the telephone I have -- just one second. On the
3 telephone I have that Alaina Devine, David Rogers, Jason
4 Cohen, and Mr. Burdick are present. And then I believe Mr.
5 Hart, are you also on the video?

6 MR. HART: Yes, Your Honor. David Hart for the
7 Guertin plaintiffs.

8 THE COURT: Good. And there are at least five more
9 people on the telephone who we're now aware of but I don't
10 have all of your names. So we'll make sure that the record
11 reflects everyone we know is present.

12 So I'd like to begin by asking Judge Farah if he
13 would like to talk about any issues involved in the state
14 court litigation.

15 THE HONORABLE JUDGE FARAH: Yes. Thank you, Judge.

16 I would like to just address the few pending motions
17 that are in front of this Court. Not substantively, but
18 rather we listed responses from the lawyers involved as to the
19 process and procedure of handling the pending motions, many
20 left over from prior judicial involvement.

21 We have prioritized the disqualification motion
22 brought and joined in to have the Attorney General's office
23 disqualified in all matters. That motion will be decided
24 first after receiving your input. I've determined that motion
25 will be decided on papers. There will not be an evidentiary

April 15, 2020

14

1 hearing nor will there be oral arguments.

2 The reasoning on that is, one, we have a hundred
3 pages of briefing or more affidavits, citations galore. And
4 secondarily, we don't know when we'd be able to have a live
5 evidentiary hearing with the COVID-19 situation. Rather than
6 hold things up, I think we need to get that one decided. We
7 will decide it on papers and we are shooting for May the 6th
8 for that decision to come out.

9 I'm bracketing that on the front end. On the back
10 end is the motion for a change of venue. That will be decided
11 most likely down the road, if at all.

12 In between, however, will be a series of motions for
13 reconsideration on various orders previously entered by Judge
14 Yuille. The court will issue an order emanating from today's
15 conference that will embrace all these various processes on
16 these various motions. And in that order most likely I will
17 direct under our court rule that we have responses to the
18 motion for reconsideration.

19 Other motions on our list will be in between those
20 parameters and you'll get an order reflective of everything
21 I've said by the end of this week by e-mail. Thank you, Judge
22 Levy.

23 THE COURT: Great. Thank you, very much. And I
24 can't thank you enough for being present. And also for
25 inviting me to participate last month, which feels like a

April 15, 2020

15

1 lifetime ago, by telephone in your hearing that you had to
2 begin to schedule some of this. Or I guess it was in
3 chambers. "In chambers" meeting. So thank you.

4 The next issue on the discovery coordination was
5 brought to my attention by co-liaison counsel and the LAN
6 defendants. And it was a request to have some further
7 discussion about coordination of discovery between -- let's
8 see.

9 INFORMATION TECHNOLOGIST MATTA: Sorry, Judge. We
10 had some feedback. We got Mr. Erickson back online.

11 THE COURT: Thank you, Josh.

12 INFORMATION TECHNOLOGIST MATTA: No problem.

13 THE COURT: I just received a message from Jason
14 Cohen that Mr. Eric Rey and Mr. Cohen have joined us on behalf
15 of the United States via Zoom. But that Mr. Williams will
16 continue to speak on behalf of the Federal Government. That's
17 just fine. Thank you Mr. Rey, R-E-Y, and Mr. Cohen,
18 C-O-H-E-N.

19 So it was brought to my attention by co-liaison
20 counsel and LAN defendants that they wish to have some further
21 discussion about coordinating the discovery and the EPA's
22 involvement in depositions.

23 So does someone want to identify the issue for
24 co-liaison counsel first? And then I'll turn to the LAN
25 defendants. And then Mr. Williams can respond.

April 15, 2020

16

1 MR. STERN: Your Honor, this is Corey Stern. I was
2 one of the individuals who raised this issue.

3 The Meeks case was filed on November 13th, 2019. And
4 it's been, you know, close to six months since it's been
5 filed. And only recently I assume a request was made for
6 underlying documents associated with those depositions. And
7 it was never made to me as counsel for Meeks. I just heard it
8 in the, you know, the preconference meeting that we had.

9 I believe co-liaison counsel for Judge Parker in her
10 FTCA cases are Michael Pitt and Paul Napoli. It's my
11 understanding that only Monday was there a conference with
12 Judge Parker to discuss the viability and appropriateness of
13 participation in the depositions that are taking place before
14 this Court or in conjunction with this Court's CMO.

15 My understanding about the entry of complimentary
16 case management orders starting back with Judge Yuille a year
17 or year and a half ago, which at that time the parties to this
18 case I believe attempted to get Judge Parker to join with some
19 pushback by the EPA from what I understand. And so it's been
20 -- you know, there's been a number of depositions that have
21 taken place not just of plaintiffs but of defendants.

22 And Mr. Pitt respectfully opposes the consolidation
23 of the Meeks case with the Walters case as well as with any
24 other FDCA cases with the Walters case. And the EPA has never
25 once asked me as counsel for the plaintiff in Meeks as far

April 15, 2020

17

1 back as November despite the public nature of this Court's
2 case management order that attempts at least to coordinate
3 discovery for every litigant so that depositions won't have to
4 take place twice such that I genuinely believe regardless of
5 what this Court does.

6 Whether this Court consolidates Meeks with Walters,
7 keeps Meeks but doesn't consolidate it with Walters, sends
8 Meeks to Judge Parker to be consolidated with the FDCA cases.
9 Or maybe more drastically bring the FDCA cases over to, you
10 know, be under Your Honor.

11 The way this is heading right now with the EPA is
12 that there will likely be duplicate depositions that are going
13 to be required because they are not participating in the
14 depositions as they're moving forward. And so there was a
15 deposition very recently of an employee of the State of
16 Michigan, a former employee of the State of Michigan.

17 And a week in advance of that deposition I wrote to
18 Mr. Williams. I wrote to Mr. Rey. I wrote to Mr. Cohen. And
19 I said to them and I copied the entire executive committee for
20 the defendants as well as interim lead counsel for the
21 putative class and I suggested we have a meet and confer to
22 discuss an allocation of time for the EPA because that's been
23 such a hot issue before Your Honor.

24 I invited the EPA to, A, let us know if it was
25 intending to attend that deposition. And then B what its

April 15, 2020

18

1 availability would be for discussion about an allocation of
2 time. And they responded, the EPA, you know, respectfully
3 that they had no intention of participating in that
4 deposition.

5 During the pendency -- during that deposition, the
6 VNA attorneys led that deposition because they noticed it.
7 And then I followed the VNA defendants. And the testimony
8 included some damning statements about the EPA's role in this
9 litigation.

10 And if I was counsel for the EPA, I would have wanted
11 to be there to follow-up, to ask my own questions, to figure
12 out, you know, the background and foundational basis for this
13 witness's testimony regarding EPA. But instead the EPA wasn't
14 present despite me letting them know that I thought they ought
15 to be and inviting them to be and offering to discuss the time
16 allocations.

17 So earlier in the in conference meeting, which
18 obviously wasn't on the record, the two issues that I believe
19 the EPA have most glaringly with participation at this point
20 is, one, they believe they don't have documents.

21 As far as I know, not until Monday was there a
22 request made for those documents from Mr. Pitt who had no
23 interest in these cases being consolidated with Walters, and
24 from Mr. Napoli. And two, that if this case is transferred to
25 Your Honor, the EPA intends to file a motion to dismiss.

April 15, 2020

19

1 The reality is is I imagine that the EPA's going to
2 file the exact same motion to dismiss regardless of who the
3 judge is on the case because I don't know why which judge is
4 assigned to a case will determine whether a motion to dismiss
5 would be filed. The reason a motion to dismiss would be filed
6 would be because there's something about this case that they
7 believe has not been pled appropriately irrespective of Judge
8 Parker's order in the other FDCA cases.

9 So I understand it's not a perfect situation for the
10 EPA. I'd be willing if Mr. Pitt and Napoli can't do it or the
11 EPA feel that it's not being done fast enough, I'd be willing
12 to give them the documents that they need to participate in
13 these depositions. And I would expect that even those who
14 oppose the consolidation would be very in favor of their
15 participation so that they are not required to take the same
16 depositions twice as well.

17 It's not as if I'm the only one that has, you know,
18 issues with the EPA that are being discussed during these
19 depositions. Mr. Leopold and Mr. Pitt for the putative class
20 also have EPA claims that are before Judge Parker. But why
21 they would want to take depositions twice doesn't make any
22 sense to me.

23 So I'm not trying to take anyone's rights away or
24 hamstring them with regard to what's available to them for the
25 deposition, but there's got to be a way for the EPA to

April 15, 2020

20

1 participate in these depositions.

2 THE COURT: And Mr. Stern, I'll turn to LAN and then
3 give Mr. Williams a chance to respond. But what we know from
4 earlier today we had a what I call an in chambers off the
5 record just work session on this case just trying to sort out
6 some of these issues. And Mr. Williams told us that without
7 the documents, he doesn't feel prepared. And of course I
8 don't want a situation going on where people can sort of
9 willfully not request documents and so on. I'm not suggesting
10 that happened at all.

11 But we want all of these cases to proceed as
12 efficiently and effectively as they can.

13 But what do you suggest doing about that, Mr. Stern?
14 The fact is he didn't have the documents. And he also
15 indicated that perhaps they don't even want to take Valerie
16 Brader -- is that who -- that's who it was, Valerie Brader?

17 MR. STERN: Yes, Your Honor.

18 THE COURT: That they don't even want to take her
19 deposition.

20 MR. STERN: I have no issue if -- I mean, in the
21 correspondence that went back and forth between the EPA and me
22 during the period prior to and subsequent to Ms. Brader's
23 deposition, I didn't suggest that they necessarily have to
24 take it again. I just suggested that in light of having been
25 offered to sit in the deposition, to participate in the

April 15, 2020

21

1 deposition.

2 You know, when I sent the first e-mail saying, hey,
3 we'd like to know if you're participating and our group would
4 be willing to meet and confer so that you could have adequate
5 time to participate during the deposition, not once did
6 anybody respond to me and say, hey, we'd really like to
7 participate but we don't have the documents and so we can't do
8 it because we don't have the documents.

9 That was not the basis. Had that been the basis I
10 would have had my IT people who run relativity do whatever
11 they could as quickly as they could to get the documents that
12 were acquired by the EPA.

13 And in fact if in November of 2019 when this case was
14 originally assigned to Your Honor the EPA had looked at the
15 docket and seen the consolidation, the discovery order, which
16 they knew about because it had been raised prior to the filing
17 of my case which ended up before Your Honor. They had known
18 about it because Judge Parker at a minimum was considering
19 entering an order that was similar to the coordination order
20 that Judge Yuille ultimately had entered, I would have had no
21 problem getting them any documents whatsoever. And that to me
22 is not a reason not to participate because those documents can
23 easily be transmitted to them.

24 THE COURT: Okay. And for LAN.

25 MR. ERICKSON: Yes, Your Honor. Can you hear me?

April 15, 2020

22

1 THE COURT: I can.

2 MR. ERICKSON: So our -- we put the issue on the
3 agenda also. Our concern was just the same general concern
4 that we've been raising going back several months, probably
5 five or six months. And that is simply that the purpose of
6 the discovery coordination order was to seek to ensure as much
7 as possible the depositions be taken only once.

8 And for many months the answer was, well, we can't do
9 anything with the EPA cases right now because the motion to
10 dismiss is pending. And then that decision was made and the
11 case was still there. And then I heard that there was a
12 discovery coordination order entered in those cases.

13 And I have not seen that order myself. So I don't
14 know the details. But I assume it's a complimentary order
15 like what was entered in state court. And then I didn't
16 anybody participating from the EPA at any of the depositions
17 and thought that it was something that should be on the agenda
18 and discussed.

19 And so my concern is just a generalized concern that
20 we, like all the parties, don't want our witnesses to be
21 deposed more than once. And we don't want to have to take --
22 you know, we don't want to have to come back for other
23 depositions more than once. And I think Mr. Stern's example
24 in the Brader example is probably a good one to lead the
25 discussion.

April 15, 2020

23

1 THE COURT: Okay. Thank you. One of the challenges
2 here is that I have not made a decision on whether to keep the
3 Meeks case and combine it with Walters or send it to Judge
4 Parker. The one thing that I don't have any authority to do
5 and would not and just simply cannot do is bring Judge
6 Parker's cases into -- onto my docket.

7 So Mr. Williams, do you want to respond? And I have
8 really no authority over the United States in this case at
9 this time. There's not either a motion to dismiss pending or
10 an answer in the case.

11 But I think -- you are an officer of the court and I
12 think it's in that spirit that Mr. Stern and Mr. Erickson are
13 to just simply make progress in this litigation. And you are
14 late to the game. You were sued later and so on. And the
15 Meeks case was only filed in November.

16 So can you -- I guess what I'm just looking for is a
17 representation that once you get these documents, if you're in
18 the litigation in my court, that you'll be doing everything
19 you can to get up to speed so that you will not duplicate
20 depositions.

21 These individuals, defendants, plaintiffs have been
22 in this litigation a very long time. Everyone wants to move
23 on with their lives and not spend time preparing and sitting
24 in depositions over and over and over that can be avoided.

25 MR. WILLIAMS: I'm happy to respond to several points

April 15, 2020

24

1 that were raised here, Your Honor. I think I'm no longer on
2 mute.

3 The first point asking for representation from DOJ,
4 the answer is yes. We fully expect to have discovery
5 coordinated between the different judges who have docketed
6 cases. So we have a complimentary discovery coordination
7 order before Judge Parker. It was largely inspired or copied
8 by your prior order. It's entirely consistent with it. I
9 think her order is consistent with yours.

10 To the extent as we pursue common discovery in these
11 dockets, the FDCA docket, your civil rights docket, to the
12 extent we have disputes about depositions or documents, I
13 expect and happy to be available to resolve any disputes that
14 might come up. So the representation is definitely there.

15 It's also consistent with the language of the
16 discovery coordination order entered by Judge Parker on March
17 3, 2020, ECF 112. We're not looking to have anyone sit more
18 than once for depositions. It's one of the highlights of the
19 discovery coordination protocol orders. Not looking to have
20 people be unduly burdened by discovery. The opposite.

21 We're looking to be efficient and to coordinate and
22 the complimentary discovery coordination protocol orders are
23 the cure for making sure that that happens.

24 Several other points were raised. I'd like to
25 comment, if I may. I think we're in agreement that the

April 15, 2020

25

1 consolidation of Meeks is a separate issue. It's not a
2 discovery coordination issue.

3 Apart from that we have discovery coordination issues
4 coming up here on a couple of fronts. First one is about
5 whether or not DOJ should be attending depositions of third
6 parties or parties who have not yet -- defendants who have not
7 yet answered under your case management provision. So this
8 was not addressed for the first time in our telephonic hearing
9 before Judge Parker on Monday. It was first addressed at our
10 November 15th, 2019, case management conference where all of
11 the plaintiff's counsel MDOJ were present including a lawyer
12 from Mr. Stern's firm and we talked about a variety of issues
13 about what we need to do to get the case rolling on the merits
14 front.

15 One of those items was developing a mutually
16 agreeable discovery coordination protocol and a mutually
17 agreeable case management order that has a bellwether process.
18 Between November 15th and close to New Year's 2019 we
19 negotiated both documents. Discovery coordination protocol
20 and case management order.

21 They were submitted to Judge Parker as agreed orders
22 all counsel of record January 15th. Both orders were entered
23 by Judge Parker on March 2, 2020. So the specific issue of
24 when EPA would participate in depositions or other discovery
25 in the cases before Your Honor is specifically addressed in

April 15, 2020

26

1 the order.

2 The plan was, in short, to have plaintiff's counsel
3 give us what we're calling here I think all of the documents
4 which includes -- it's specified in the order. Interrogatory
5 answers from transcript production yields. Also deposition
6 transcripts. All of the materials.

7 So we've been waiting pretty patiently for all of
8 those materials to be compiled. We've conferred about it
9 prior to the hearing before Judge Parker on Monday. We're
10 told that plaintiffs' liaison counsel for the FDCA cases has a
11 contractor who's doing the work to compile all the materials.

12 For me, that's acceptable. There's a process in
13 place. We've had some COVID limitations in March and April
14 obviously. So we reported to Judge Parker on Monday a plan is
15 in place to get those materials to us. And when we have them
16 we'll need some time to review them, but we certainly plan to
17 review them. And then to the extent necessary plan to
18 participate in other discovery and depositions.

19 It may very well be our team does not need to ask for
20 additional deposition time of anyone who's been deposed
21 before, especially for the individual defendants. Footnoting,
22 putting aside the plaintiffs, I know that you and Mr. Rey
23 talked about plaintiffs' specific jurisdictional issues. So
24 maybe we should leave that there. I think pertains to the
25 Meeks consolidation issue.

1 But with respect to the parties who have not yet
2 answered that discovery, we'll even make an assessment if
3 necessary. That phenomenon of our requesting leave to
4 re-depose certain people for a certain amount of time, it's
5 specifically addressed in our discovery coordination protocol.

6 This was negotiation that happened Christmas to New
7 Year's. Mr. Stern was invited. He chose not to attend.
8 Okay. We agreed to it by all of the lawyers in those cases.
9 Napoli, Shkolnik, Michael Pitt, everyone else. It's page 11
10 section 2GA.

11 We have -- once we have a certification -- that's the
12 term we use. Certification that you've given us all of the
13 documents. That term meaning is pretty broad. It actually is
14 inspired by language you had used in your prior discovery
15 coordination protocol or perhaps Judge Yuille.

16 Once we have those names, we'll make an assessment if
17 we do need to participate in other depositions in the docket
18 before Your Honor.

19 Secondly --

20 MR. MASON: Can I address --

21 MR. WILLIAMS: -- [Inaudible] EPA depositions. We
22 have dates on the calendar. We've negotiated those with
23 counsel who requested those depositions. I don't mean to
24 speak out of turn. Is it Mr. Mason?

25 MR. MASON: I'd like to speak if I could. I didn't

April 15, 2020

28

1 mean to interrupt you though. I'm sorry.

2 THE COURT: Go ahead, Mr. Mason.

3 MR. MASON: So let me say I've known Mike Williams
4 for years and I have great respect for him. So this is not --
5 my comments are not directed at him as an individual, but just
6 the status of where we sit.

7 And my only concern is the concern of the
8 coordination and not doing this more than once. But this
9 issue of documents, the EPA has been involved in this and
10 aware of the litigation for many years, Your Honor.

11 And the fact is to now suggest that they now need
12 documents when taking no effort to be up to speed knowing that
13 this day and these days coming and the need to coordinate is
14 coming, I just -- I struggle with this because the reality is
15 it's not like they're brand new to the case and new and need
16 something.

17 They've been aware of this and have based on my view
18 have chosen to put their head in the sand a little bit about
19 it instead of being proactive and get what they need and know
20 that they need it so that they can participate like everybody
21 else. And so strategically if that's been the case, it's
22 water under the bridge. But we need to get on with it. They
23 need to get what they need and participate so that we have no
24 question about needing to ask for more or re-deposing people.

25 THE COURT: And Mr. Mason, what do you suggest that I

April 15, 2020

29

1 do? What I'm interested in seeing is as long as I have
2 Meeks -- and I'll sort out a decision soon on that -- I'd like
3 to know when that certification is going to be provided that
4 all of the documents have been provided to EPA. And I guess
5 that's not a question for you, Mr. Mason. It would be for Mr.
6 Stern or -- who is it who's supposed to --

7 MR. STERN: Your Honor, this is Corey Stern. First
8 of all, it's supposed to be Mr. Pitt and Mr. Napoli who are
9 providing the documents.

10 Number two, of course I was invited to conferences
11 and meetings about discovery before Judge Parker. But I
12 didn't have a case before Judge Parker. And a lot's been made
13 about how long I waited to file FDCA case against the EPA.
14 I'm not sure why the EPA waited from November until late
15 February or March to file a motion to consolidate. And so at
16 every meeting I ever participated in, I repeatedly said --

17 THE COURT: I don't care about any of that actually.
18 I don't care about any of that. It doesn't even matter to me.

19 MR. STERN: So it's Mr. Pitt and Mr. Shkolnik -- Mr.
20 Pitt and Mr. Napoli who were supposed to certify to the EPA
21 the documents had been produced. And that's under the
22 authority of Judge Parker.

23 THE COURT: Okay. So let me ask Mr. Pitt. Mr. Pitt
24 --

25 MR. PITT: Yes, Your Honor.

April 15, 2020

30

1 THE COURT: When will you be able to provide that
2 certification?

3 MR. PITT: We should be able to do it early next
4 week. We have a vendor that has all of the discovery
5 documents on a document platform. We have been told that with
6 proper security and firewalls established, the DOJ will be
7 given an access code to that database that will exclude
8 plaintiffs' work product, of course, so that they would have
9 access to all of the documents that we have assembled over the
10 last three years all in one place and they would have, you
11 know, word search ability.

12 It would be user friendly to the nth degree and they
13 would have full access to it. And we're in contact with our
14 vendor today just to find out where we're at. And I was told
15 by the end of the week, early next week all the firewall
16 safeguards will be put in place. And we can just e-mail to
17 Mr. Williams, Mr. Rey, and Mr. Cohen the access code and they
18 will then have all of the documents that we have.

19 THE COURT: Okay. Thank you. So Mr. Williams,
20 knowing that, I'm not very interested in reviewing a lot of
21 history of who attended what and when things happened that
22 don't relate to what we're trying to sort out. Not that you
23 were going to do that, but I'm just saying that for everybody.

24 Knowing that you'll have the documents by the end of
25 next week, do you anticipate being able to get started

April 15, 2020

31

1 attending depositions or waiving your presence? You don't
2 have to take anyone's deposition or observe a deposition if
3 you don't want to.

4 MR. WILLIAMS: Happy to respond, Your Honor. So I
5 haven't seen the materials yet. So it's a black box to a
6 certain degree. I'm very interested in seeing them.
7 [Inaudible] initial assessment I think and relatively quickly.

8 I think there is one more point that I think is very
9 relevant to what you're focusing on now. And the information
10 --

11 THE COURT: Mr. Williams, sometimes your voice is
12 going out. It's a little bit in and out. So here's a
13 solution --

14 MR. WILLIAMS: Is this any better if I move my
15 headset?

16 THE COURT: I think it might be. But can you also
17 try to speak a little slower? Because when you're going out,
18 I have a feeling my court reporter can start to figure out
19 what you're saying if you go a little slower.

20 MR. WILLIAMS: Okay. Thank you, your Honor. I think
21 I talked about the first part of that how we're [Inaudible]
22 interested in -- maybe I'll try to ditch the headset.

23 THE COURT: Yeah. That might be necessary.

24 MR. WILLIAMS: Is that any better, Your Honor? It is
25 better.

April 15, 2020

32

1 THE COURT: Good.

2 MR. WILLIAMS: So on the first part we're interested
3 in seeing the documents, the written discovery depositions.
4 We'll assess it as quickly as practicable. We don't know the
5 scope of it.

6 The second point I think is what we're considering
7 here is in part based on what Mr. Mason is talking about. The
8 EPA depositions, we have offered a date [Inaudible] rule.
9 Specifically we are familiar with EPA's documents. We have
10 been doing this for some time. We're not seeking to delay
11 things in any way. We have dates -- we had dates on the
12 calendar in April through July for 10 EPA depositions.

13 Sorry. Have I lost you?

14 THE COURT: No. You're still going in and out a
15 little bit. It's okay. Just a minute.

16 MR. WILLIAMS: So my point is, we have scheduled 10
17 EPA depositions. We're not looking to slow things down at
18 all. We had to navigate COVID concerns in April for one
19 witness. She was rescheduled for June or July.

20 But on the state's documents, for example, the
21 discovery responses, we've never received them. And we raised
22 it in conference November 15th. It's taken some time. It
23 hasn't happened yet. It sounds like it's going to be
24 happening soon. We're very interested. Not looking to delay.
25 And as to [Inaudible] those are my answers, Your Honor.

April 15, 2020

33

1 THE COURT: Thank you. I think it's the best we can
2 do at this point -- Mr. Williams, are you on --

3 MR. WILLIAMS: I'm not hearing you, Your Honor.

4 THE COURT: Are you on by telephone and --

5 MR. WILLIAMS: No, Your Honor. This is purely on my
6 DOJ laptop. I'm not currently on the phone.

7 THE COURT: Okay. All right. Thank you. I'm
8 hearing feedback. Unless Mr. Stern, Mr. Mason, Mr. Erickson,
9 whoever has spoken has a specific proposal that I can take
10 into consideration, I think the issue has been laid out for
11 what the concern is. Mr. Williams has heard it. He's
12 responded. And it's my inclination that we move on from
13 there.

14 But Mr. Stern, do you have anything further on this?

15 MR. STERN: Only that, you know, within a few days I
16 think of either filing the motion to consolidate or Your Honor
17 hearing the motion, the EPA did, in fact, file notices of
18 nonparty fault that include many of the defendants that are
19 before Your Honor.

20 And so it's not just a matter of nonparties who have
21 not yet answered. I mean, there's just -- you know, it's fine
22 with me. It doesn't matter to me. But I think the option
23 should be available. And I think if the opportunity to depose
24 some of these folks isn't taken for whatever reason, it should
25 at least be considered down the road at a point in time where

April 15, 2020

34

1 the EPA moves to re-depose individuals.

2 THE COURT: Okay. Well, a record has been made now
3 of the concern and I think we should move on.

4 MS. SMITH: Your Honor?

5 THE COURT: Yes.

6 MS. SMITH: I'm sorry. This is Susan Smith. I
7 simply want to flag a concern.

8 Early on when Your Honor issued an order requiring
9 counsel to register on your docket to ensure we all were
10 notified and events were occurring, having now heard what's
11 happening with Judge Parker's docket, I'm interested in
12 knowing if there is a mechanism by which lawyers for parties
13 who were made named in this nonparty at fault but are not
14 litigants in Judge Parker's cases can be apprised of what's
15 occurring on that docket other than [Inaudible].

16 For example, if there are depositions to be noted in
17 the cases before Judge Parker, how is it that -- is there a
18 communication tool that we have that will inform everybody
19 else what's occurring so we can opt in to participate if
20 needed?

21 THE COURT: That's a very good question. And I would
22 recommend to the parties that the case management order before
23 Judge Parker, that the parties suggest implementing such a
24 protocol. There's probably no authority that I have to do
25 that, although I can communicate the request to Judge Parker

April 15, 2020

35

1 and brainstorm some ideas for it.

2 MS. SMITH: I'm concerned if they proceed with
3 depositions that they view as relevant only to their
4 litigation and the rest of us aren't aware of it, that that
5 may then raise the need for duplication.

6 MR. STERN: So the one --

7 MS. SMITH: I haven't seen the [Inaudible] entered in
8 the Parker cases so I don't know that it calls for that type
9 of mechanism.

10 MR. STERN: This is for the court reporter. This is
11 Corey Stern.

12 So I was ordered -- I'm not sure how. But I was
13 ordered by Judge Parker to make an appearance in Meeks -- I'm
14 sorry. In the consolidated FDCA cases during the pendency of
15 one of the motions that was filed. And as a result of my
16 appearance on behalf of an interested party or the nonparty, I
17 have begun getting pleadings from the FDCA cases.

18 And so it may not be the most efficient thing for
19 anybody to do. But if you file an entry of appearance on
20 behalf of an interested party in the *Burgess FDCA
21 consolidated cases, I believe all pleadings are being entered
22 on that docket. Whether notices of depositions are being
23 filed on the docket, I haven't seen any. And typically
24 they're not. So it does raise a concern involving that.

25 But perhaps the parties who are all on this call

April 15, 2020

36

1 anyway can agree that any time a noticed deposition take
2 place, they will file it on the docket for the benefit of all
3 of us who are presently nonparties to that litigation. That
4 may solve that problem.

5 MS. SMITH: Well, I --

6 THE COURT: You know I'm a little concerned that I
7 think the Court may automatically strike notices of discovery.
8 I think our clerks office may block those as prohibited
9 filings. There's got to be a way around that.

10 But I guess what I would ask in the interest of
11 everyone's time -- there are 38 people on the Zoom link and
12 another good 10 or more on the telephone -- that the parties
13 to the *Burgess combined cases get together and see if there's
14 something that can be done. Because it will serve no one's
15 interest to repeat depositions that don't need to be repeated.
16 And where it can be avoided.

17 So to that end, I have set aside three additional
18 dates for discovery dispute resolutions. And that's April
19 29th -- I'm sorry. Just two. April 29th at 2:00 PM and May
20 6th at 2:00 PM. I anticipate using Zoom technology for that
21 as well.

22 So then I wanted to just indicate that I will by the
23 end of the week make a decision on the motion for extension of
24 time filed by Mr. Shkolnik in response to the MDEQ motions to
25 dismiss.

April 15, 2020

37

1 I also learned earlier today that the City of Flint
2 may have some similar motions that they will be filing and I
3 would just ask that you hold off on filing those motions until
4 I've made a decision in the MDEQ motion or the motion for
5 additional time I guess is what I need. I won't be deciding
6 the motions. I'll be deciding the motion for additional time
7 filed by Mr. Shkolnik.

8 The other thing is that now that the Brown and Marble
9 decisions have been made, we have additional legionella cases
10 where those decisions need to be applied if they apply. I
11 have six -- I've identified six of them with the assistance of
12 my law clerk, Abigail DeHart.

13 And in several of them, the allegation is legionella
14 exposure but it's not clear whether the plaintiff ultimately
15 came down with legionella disease and suffered damages. One
16 in such case is 20-10330 filed by Robert Giroux, who I don't
17 know if he's on the telephone.

18 But there's also -- I think Mr. Shkolnik, you may
19 have a case, 17-12153, where there's allegations of legionella
20 exposure. And I just have not looked closely enough to know
21 whether there's legionnaires disease or whether there is a
22 cause of action for exposure without coming down with
23 legionnaires pneumonia.

24 MR. SHKOLNIK: Judge Levy, if I can -- we're double
25 checking. We may have checked the wrong box and it may not be

1 exposure. It may, in fact, be the diagnosis of legionnaire is
2 what I think it is. But I don't want to make that
3 representation for sure. But we're double checking. I don't
4 believe it was exposure to legionnaire -- legionella.

5 THE COURT: All right. What I'll do though is
6 there's going to be some additional work done by Debra
7 Greenspan to make sure we know the whole universe of
8 legionnaires cases, legionella cases.

9 So once that's done I'll set a briefing schedule for
10 motions to be filed. And the plan will be to apply the
11 decision essentially in Marble and Brown to the extent of it
12 applies. And what I would want in those briefs, everyone is
13 preserving all of those arguments.

14 Lawyers always need to preserve arguments and I
15 understand that. But what I'll really want is to know why
16 these cases are different if they are and should be treated
17 differently. And I think the key area where that could apply
18 is in the bodily integrity count in terms of when the
19 individual suffered from legionnaires disease.

20 So I'll set that very soon. I'll sort that out.

21 And now I think we're up to the point in the agenda
22 where Debra Greenspan will give us an update on the work that
23 she's been doing, which I think is quite significant.

24 Debra, are you there still?

25 SPECIAL MASTER GREENSPAN: I am. Hopefully you can

April 15, 2020

39

1 hear me. I unmuted.

2 THE COURT: Good.

3 SPECIAL MASTER GREENSPAN: Thank you, your Honor.

4 I'm going to give a report on the claim data analysis and
5 collection that you continue to talk about at each one of
6 these status conferences.

7 I am preparing to file what I'm calling the third
8 interim report on the collection of claim data. The second
9 report was filed in September. So this is about a six month
10 interval in the following sense.

11 The data that is being reported on in this third
12 interim report is as of March 7th. So it's approximately 6
13 months since the last report. Obviously we have a bit more
14 data since the time I cut it off for purposes of this. But
15 let me just give you a couple of highlights. And again, I
16 plan to file this by the end of the week.

17 THE COURT: And can you talk just a little bit
18 slower?

19 SPECIAL MASTER GREENSPAN: Oh I'm sorry. Okay.

20 THE COURT: Go ahead.

21 SPECIAL MASTER GREENSPAN: I just want to repeat that
22 I plan to file it by the end of the week. And it again
23 collects data as of March 7th.

24 So since our last report, we have slightly under
25 2,000 newly retained clients reported by plaintiffs' counsel.

April 15, 2020

40

1 So in that period, we've gained close to 2,000 additional
2 people. There are still some issues with duplicate claims.
3 And so I'm not giving you -- those have to be worked out. But
4 basically in our raw data, we have another 2,000 or so people
5 retained counsel.

6 So that brings us to about 21,587 individuals who've
7 retained counsel. There's another 11,000 or so who have been
8 listed in the data as contacts. Meaning they have a
9 relationship or some sort of contact relationship with a law
10 firm. And so they have been listed and we've collected that
11 data as well.

12 Important just other highlights that the report will
13 include, the kind of charts and tables that I've included in
14 prior reports. It breaks the individuals down by the times
15 that they're asserting. Whether it's a personal injury claim,
16 a wrongful death claim, a business claim.

17 It breaks the group of people down by age. So we
18 have date of birth basically. So I have approximately it's in
19 the neighborhood of 37 to 40 percent of the people in this
20 report are under 18. And I'm counting under 18 as of the date
21 of exposure. So we're using a period that's 2014 to 2016 for
22 that purpose.

23 We have charts on the injuries that people are
24 claiming. I don't think it is -- I don't think anyone should
25 view it as the end, in the ending and final injuries. But I

April 15, 2020

41

1 have -- just so it's clear because of the discussion that
2 we've had so far today, we have -- I have 103 people who've
3 asserted legionella claims in this data. So they had not all
4 filed cases. But they have been presented claims in this
5 process.

6 I also just want to note just again for purposes of
7 understanding what we have in terms of the individuals that
8 have come forward versus the individuals who filed claims,
9 it's only about 25 percent of the people who've come forward
10 in these reports who have actually filed cases.

11 So it's -- so we don't have cases for a lot of
12 people. We have people who've identified themselves. They
13 haven't filed an actual lawsuit.

14 Now I do want to mention that since March 7th, I've
15 received a substantial amount of additional data from
16 plaintiffs' firms. So I will be reporting on that at our next
17 status conference. But I believe we have more claims that
18 have been -- that have come forward and retained counsel than
19 we had for this current report. And we have a lot of other
20 additional updates.

21 I get updates constantly. Sometimes they are
22 clarifications. Sometimes they are supplementing information
23 that we have previously requested. And the counsel has just
24 been able to ascertain the information. So again, it's a
25 moving -- it's constantly moving.

April 15, 2020

42

1 We have, again, also in our -- in these charts, we
2 have information about people who've obtained blood lead level
3 testing and what those results are and how many people have
4 reported on them. Again, I want to emphasize just because
5 it's not in there doesn't mean somebody hasn't had a blood
6 test. I can only report on what has been provided to me. We
7 also have data on water testing at people whose homes have had
8 their water tested for the presence of lead. And we have all
9 of that data reflected in this report as well.

10 So when it is filed, I think everybody will be able
11 to read it. And certainly if there are other kinds of
12 information that will be useful to the Court or to the
13 parties, we can certainly put that together or evaluate
14 whether it's possible to put it together in a straightforward
15 manner or with the data that we already have.

16 And I certainly welcome any questions from anybody
17 about the data in the report or how best to report on the
18 data. So that's all I have for today.

19 THE COURT: Thank you, very much. I had to unmute
20 myself. And I've seen a draft of this report. And it is
21 remarkably detailed. I think it will help everyone
22 enormously. And as Debra say, it's only as accurate as the
23 reporting that she receives.

24 So I just ask that everybody continue to focus on
25 getting accurate data to Ms. Greenspan because it's a very

1 valuable source of what has happened and where we are. And I
2 think it can be used in a variety of important ways. So thank
3 you very much for all of the work that went into that.

4 Are there any questions for Ms. Greenspan? Okay. I
5 don't see any. Okay.

6 Well, I also have for decision a smaller issue which
7 is a request by class plaintiffs for the Court to issue
8 letters rogatory regarding a deposition they wish to take in
9 France. And so I will be addressing that. I'll take a look
10 at whether I want a reply brief. Initially I thought that
11 wouldn't be necessary and probably it still will not be
12 necessary. But if it is, I'll issue an order and let you
13 know.

14 The next status conference will be Wednesday, May
15 20th, 2:00 PM. The current agenda for this conference
16 indicates that it will be in Ann Arbor Michigan. And I
17 sincerely believe it will need to be done by video
18 teleconference and telephone conference call.

19 So if we -- let's assume that for this -- at this
20 time. I don't think people should start making reservations
21 to fly in here at all. So I'll set up the technology and send
22 out the notice well ahead of time.

23 So is there anything else to be addressed at this
24 time? Okay. Hearing nothing, thank you, all, very much.
25 Stay home, stay safe, and stay healthy. And that will

April 15, 2020

44

1 conclude our meeting and court is adjourned.

2 (Proceedings Concluded)

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7 CERTIFICATE OF OFFICIAL COURT REPORTER

8 I, Jeseca C. Eddington, Federal Official Court
9 Reporter, do hereby certify the foregoing 44 pages are a true
10 and correct transcript of the above entitled proceedings.

11 /s/ JESECA C. EDDINGTON
12 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

5/8/2020
Date